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No. 10-701

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

FRANK S. EVANSON, individually and in his official capacity as a police officer of the Township of Cranberry,

Petitioner,

v.

SARA R. REEDY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF CERTIORARI FILED BY AMICUS CURIAE, THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

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INTEREST OF AMICUS CURIAE

Amicus Curiae, the Pennsylvania State Association of Township Supervisors ("PSATS") was formed by the Pennsylvania legislature, by authority of section 1402 of the Second Class Township Code, 53 P.S. §66402, for the purpose of addressing issues and subjects relative to the duties of elected and appointed township officials and the improvement of township government. The mission of PSATS is to preserve and strengthen township government and to secure greater visibility and involvement for townships in the state and federal political arenas. In the instant matter, PSATS is interested in ensuring that the defense of qualified immunity for governmental officials is maintained by the proper analytical standard and is applied in a uniform and definable manner.[1]

All counsel of record have received timely notice of the intent to file this Brief and consent was granted.

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[1] In accordance with Rule 37.6 of the Rules of the Supreme Court of the United States, counsel for PSATS hereby confirms that no counsel for any party in the instant action authored this brief in whole or in part, nor did counsel for any party make a monetary contribution intended to fund the preparation or submission of the brief.

SUMMARY OF ARGUMENT

The defense of qualified immunity for governmental officials is a time-honored and integral part of the American judicial system. Consistent application of the defense at the earliest stage of litigation protects the public treasury from unwarranted costs and allows governmental officials to concentrate their resources on serving the public rather then defending unnecessary litigation. Certainty in the guidelines provided in applying qualified immunity allows governmental officials to exercise their authority without fear of reprisal except in the most egregious of circumstances. At the same time, individuals are entitled to be free of impingement on their civil rights. These two legitimate societal interests frequently encroach upon each other's boundaries. It is critically important that court decisions addressing the delicate balance between these two tenets be consistent and reliable so that all concerned, government entities, government officials and individual citizens, understand where the lines are drawn so that each can act with due respect to each other's rights and defenses.

In this case, the Court of Appeals has blurred the lines between these two legitimate interests and misapplied the guidelines established by this Court for analyzing when qualified immunity is to be available in a section 1983 action. The Court of Appeals has gone too far in

finding that all alleged facts are to be viewed from the perspective of the complaining party and either ignoring or dismissing facts that support the police officer's actions. In doing so, the Court of Appeals has created confusion as to the appropriate standard for judging the behavior of police officers in performing their daily duties.

Unless this error is corrected and the case is restored to the established guidelines set forth by this Court in numerous precedents, the proper performance of police officers in performing their duties may very well be unduly stifled. Holding police officers to a higher standard of care than required by previous cases allowing for qualified immunity could result in inadequate enforcement of the laws of the land and may precipitate the imposition of unwarranted liability upon municipal government. Further, governmental entities and officials in general may find themselves spending inordinate amounts of time preparing for and attending trials where the claim should have been disposed of at the early stages of litigation.

Review of the Court of Appeals decision is important to ensure that there remains consistency and predictability in application of the defense of qualified immunity at the earliest stage possible so that governmental officials can perform their duties without fear of liability, absent malice or egregious infringement on clear constitutional rights.

ARGUMENT

Consistent application of the standard for determining qualified immunity for government officials by the courts is essential to providing the proper guidance to those who are tasked with service to the citizens of this country. Departure from established guidelines has the potential to subject those who we entrust with protecting our rights and enforcing our laws to unwarranted liability and uncertainty in the fulfillment of our civil servants' daily duties. Governmental entities, especially those at the local level, rely on a consistent application of qualified immunity for their employees so that they can allocate their scarce resources to serving their citizens rather than wasting time, energy and funds in defending unwarranted and extensive litigation. The result of narrowing the application of the defense of qualified immunity will have not only the direct effect on municipal governments in using public funds to defend claims against their employees, but also the indirect effect of lost time of government employees in participating in the preparation for and attending proceedings often involved in a lengthy trial.

The principle of qualified immunity for governmental officials is deeply ingrained into our judicial system. The application of this principle is necessary for the protection of the men and women

who provide service to others in all branches of government. A fair and even application of the defense of qualified immunity is essential to a fair balance of protecting individual civil rights and the need for aggressive enforcement of the laws and regulations throughout our country. Individual citizens have the right to proper redress when their rights are infringed. It is equally important to protect governmental officials from liability resulting from their official actions unless the actions are patently malicious or knowingly illegal under the circumstances.

The United States Supreme Court has repeatedly recognized the need for immunity for governmental officials. "[O]ur decisions consistently have held that government officials are entitled to some form of immunity from suits for damages. As recognized at common law, public officers require this protection to shield them from undue interference with their duties and from potentially disabling threats of liability." *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982).[2]

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[2] The Court in *Harlow* discussed the distinctions between absolute immunity and qualified immunity and provided guidance on which type would apply in the context of executive officials. There is no dispute that the instant case involves application of qualified immunity and the standards for analyzing its application in the context of a police officer's actions in obtaining an arrest warrant

A necessary aspect of the protection afforded to governmental officials through qualified immunity is a rational consistency in the rulings on cases in which the balance between protecting civil rights and enforcing laws is in question. Discrepancies in the application of established principles serve only to make those charged with providing protection for the citizens unnecessarily question their actions. Inconsistent decisions by the courts cause confusion and uncertainty in the individuals who are assigned to provide the protection to the citizens. It is critically important, therefore, that individual cases uniformly apply the standards set by this Court. The decision of the Court of Appeals in the instant case requires review by this Court because it detracts from that uniformity.

Inconsistent decisions can also cause police officers, police departments, and governmental officials in general to spend inordinate amounts of time preparing for and attending trials where the complaint should have been disposed of by summary judgment or other proceeding early on in the litigation process. The result of failure to properly apply the defense of qualified immunity at the earliest possible time would be that there will be less time for government officials to deal with important governmental functions. It is not in the best interests of the public at large for law enforcement and other public officials to spend time

preparing for and attending trials when the matter should have been resolved by summary judgment.

The discrepancies of the Court of Appeals decision in the instant case have been clearly spelled out by the Petitioner in his Petition for Writ of Certiorari and Amicus herein fully supports the Petition and reasoning of the Petitioner. A brief expansion on that reasoning will be discussed below. It is the very nature of the Court of Appeals anomalous ruling that should cause this Court to grant the Petition in order to both correct the application of the standard for qualified immunity in the case and to provide clarity for future similar cases involving a police officer's analysis of the known facts of a case. Such clarification will provide certainty to such officers and other government officials and allow them to vigorously exercise their authority without fear of undue reprisal.

Qualified immunity is not merely a defense to actions brought by those who believe they have been wronged by those acting under color of state law. Rather, it is at the very heart of necessary protections offered to government officials to allow them the freedom to perform their governmental function.

> Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." *Mitchell v. Forsyth*, 472 U.S. 511,

> 526 (1985). The privilege is "an *immunity from suit* rather than a mere defense to liability; and like absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Ibid.*"

Saucer v. Katz, 533 U.S. 194, 200-201 (2001) (emphasis in original). Therefore, it is important that the application of qualified immunity be determined not only at an early stage of litigation, but also that it be determined on a consistent basis in line with established guidelines. By necessity, this warrants a review at the earliest possible stage of litigation, which often results in determinations being made at summary judgment proceedings.

The application of the rules established for determining if summary judgment is appropriate may, at times, seem to conflict with the principles established for application of qualified immunity. However, a fair and appropriate balance between these two standards is necessary to properly determine if any particular case should proceed to trial. The Court of Appeals in the instant case has drifted so far from the established principles and this proper balance that review of the decision by this Court is required.

The U.S. Supreme Court articulated the modern-day standard for qualified immunity for police officers in the context of section 1983 cases in

the case of *Malley v. Briggs*, 475 U.S. 335 (1986). In this case, the Court recited the "objective reasonableness" standard to determine if an arrest warrant that was alleged to cause an unconstitutional arrest, would result in subjecting the officer to trial. "Defendants [police officers] will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue; *but if officers of reasonable competence could disagree on this issue, immunity should be recognized.*" *Id.* at 342 (emphasis added). In further explaining this standard, the Court stated:

> Accordingly, we hold that the same standard of objective reasonableness that we applied in the context of a suppression hearing in *Leon*[3] ..., defines the qualified immunity accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest. Only where the warrant application *is so lacking in indicia of probable cause* as to render official belief in its existence unreasonable ... will the shield of immunity be lost." *Malley*, at 344-345, (emphasis added) (internal footnote omitted).

Therefore, in applying the qualified immunity privilege, a court is required to determine if, based upon the information available to an objectively reasonable police officer under the

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[3] *United States v. Leon*, 468 U.S. 897 (1984).

circumstances and at the time an arrest warrant is obtained, that officer could possibly have concluded that probable cause existed to obtain the arrest warrant. If the answer to this question is yes, then qualified immunity attaches and the officer is entitled to judgment in his or her favor on a motion for summary judgment.

Balanced against this rule is the standard for determining if summary judgment is appropriate at the pre-trial stage. Summary judgment should be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ. P. 56(c)(2). In doing so, the ruling court is required, for purposes of summary judgment only, to resolve any factual disputes in favor of the non-moving party.

In applying these two legal tenets, it is easy to see that potential conflicts could arise in wading through the allegations set forth by each of the parties. On the one hand, to determine if summary judgment is applicable, the facts are to be viewed in light of the non-moving party, suggesting that the scales are to be tipped in favor of the non-moving party at this stage of the case. On the other hand, to determine if qualified immunity is appropriate, all of the facts as they appeared at the time of the officer's actions must be evaluated to determine if

sufficient facts exist to conclude that an objectively reasonable police officer might find that probable cause to seek the arrest warrant existed.

To resolve this potential conflict, it is necessary to evaluate each case based on all of the facts that were known to the police officer at the time he took action to obtain the arrest warrant. To do this, one must step into the shoes of the police officer at the time that the request for a warrant is made.

> [W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the "objective legal reasonableness" of the action, *Harlow*, 457 U.S. at 819, assessed in light of the legal rules that were "clearly established" at the time it was taken, *id.*, at 818.

Anderson v. Creighton, 483 U.S. 635, 638 (1987).

The Court in *Malley*, *supra*, further instructs that, "if officers of reasonable competence could disagree on this issue [that a warrant should issue], immunity should be recognized." *Id.* at 341. "As the qualified immunity defense has evolved, it provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Id.*

Thus, there is the inference in this Court's decisions that police officers are to be given the benefit of the doubt absent evidence of malice or the clear knowing violation of the law. The Court of Appeals in this case, however, did not recognize this benefit of the doubt in favor of officer Evanson. Rather, and without clear justification, it undertook a detailed analysis of the affidavit supplied by the officer to the judge who issued the arrest warrant and then drew practically all inferences against the officer. Even further, rather than stepping into the shoes of the officer, the Court of Appeals took the perspective of the one being arrested. The Court of Appeals readily admits this. "[F]or the reasons described above, it must be said that, *viewing the evidence from Reedy's perspective*, 'no reasonably competent officer would have concluded that a warrant should issue' when it did for her arrest for making a false report of the rape, for theft, and for receiving stolen property." *Reedy v. Evanson*, 615 F.3d 197, 224 (3d Cir. 2010).

This critical error by the Court of Appeals cries out for correction by this Court. Although the standard for summary judgment is to resolve all disputed facts in favor of the non-moving party, this standard does not translate to changing the standard for determining if qualified immunity is applicable. Qualified immunity requires the reviewing court to consider all of the evidence that would be considered by a reasonably competent police officer under the circumstances at the time of

the request for the warrant. Even then, if reasonably competent officers would disagree as to whether such evidence was sufficient, immunity relieves the officer from the litigation.

The Court of Appeals repeatedly refers to information missing from the police officer's affidavit and implies that the officer acted to intentionally omit such information. However, the Court of Appeals fails to recognize the explanations of the officer in his thought process regarding such information. For example, while there were some similarities between the attack on Reedy and the Landmark attack, there were also differences between the two that could easily have led a reasonably competent police officer to conclude that they were not committed by the same person.

The Court of Appeals seems to insert the later confession of the Landmark attacker into the scope of information available to the police officer. However, hindsight in evaluating the officer's actions has been rejected by this Court in *Graham v. Connor*, 490 U.S. 386 (1989). In *Graham*, this Court found that, "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. Although the facts of *Graham* involved an analysis of the use of force by a police officer, which entailed a much shorter window of opportunity to give thought to the circumstances, the reasoning of

the Court in *Graham* is applicable to the instant matter and to all analyses of claims of civil rights actions involving arresting police officers. That is, "the question is whether the officers' actions are 'objectively reasonable' *in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.*" *Id.*

The independent factors of this analysis can easily apply to the instant matter, albeit on a less condensed time frame. The "objectively reasonable officer" standard has been discussed above. Contrary to the Court of Appeals' opinion that the case is to be viewed from the Reedy's perspective, the facts are to be viewed from the perspective of a reasonably competent police officer. Unfortunately, the Court of Appeals only gives lip service to this standard and fails to apply the guidelines set forth by this Court to evaluate the facts from a reasonably objective police officer, not from the perspective of the plaintiff.

In addition, only those facts in dispute are to be resolved in favor of the non-moving party as part of the summary judgment analysis. However, after resolution of those disputed facts, the court was required to then consider and apply all of the facts considered by the police officer. The Court of Appeals, however, chose to discard facts supporting the police officer's actions, including those that were not disputed and that supported the officer's conclusion that the crimes had been committed.

The Court of Appeals did not analyze these facts taking into account the circumstances surrounding the officer's warrant. For example, the officer initially asked the district attorney's office to review a draft of his affidavit. The police officer should be able to rely on the external review and comment to his work. The district attorney's office replied that the affidavit should be revised, which was done by the police officer before submission to the judge. There was no further discussion by the Court of Appeals as to how the affidavit was then revised other than to state that portions of the prior draft were removed. There was also no discussion as to what portions were removed or whether the removed parts were inculpatory, exculpatory or of no consequence.

Another clear example of the Court of Appeals Court's failure to consider the facts and circumstances at the time the warrant was requested is the chronology of events. The Court made much of the fact that the affidavit was filed six months after the investigation began and that in the interim, the police officer learned of the Landmark attack and that the Landmark attack and similar attacks may have corroborated the plaintiff's story. However, the Court did not stop there. It then extrapolated the knowledge of the officer to later events and suggested that such later events should have been known to the police officer at the time of the filing of the affidavit.

The Court noted that discussions involving the Landmark attacker took place several weeks after the affidavit was filed and that the confession from that perpetrator as to the Reedy events did not occur until over eight months after the warrant was issued for Reedy's arrest. The Court later used these facts to support its claim that the police officer was not reasonable in excluding the Landmark facts from his affidavit. The Court of Appeals discussed the reasoning given by Evanson as to his analysis of the consideration of any connection between the Reedy story and the Landmark attack, but then dismissed that analysis out of hand. "Regardless of the credibility of that claimed level of cluelessness[4], the record indicates that Evanson *eventually* did recognize the connection between the two attacks." *Reedy*, at 222 (emphasis added)[5].

It is clear from this fact and others that the Court of Appeals failed to analyze the case from the perspective of a reasonably competent police officer and in light of the facts and circumstances confronting him at the time the affidavit was filed. Rather, the Court included later-discovered facts to reach its conclusion that the police officer did not act as an objectively reasonable officer.

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[4] Evanson testified in his deposition that "the 'only things that could have linked' the two incidents in his mind would have been a confession from the assailant or a DNA match." *Reedy*, at 222.

[5] Upon such recognition, the charges against Reedy were dropped.

Finally, an example of the Court's failure to follow the proper standard involved the Court's repeated statements as to Evanson's motive and intent. This Court has been abundantly clear that lower courts should not consider a defendant's motive or intent when determining whether qualified immunity should protect an official. *See* discussion of *Graham* above. Although the motivation or intent of the police officer is irrelevant, the Court of Appeals used that very factor to somehow conclude that no reasonably competent police officer would have filed the affidavit. Again, the Court of Appeals readily admits this. "We note these post-arrest events not because they figure into an analysis of probable cause at the time the arrest took place but because they may be seen as indicative of Evanson's closed mind throughout the entire set of events, if one views all of the evidence in Reedy's favor." *Id.* at 222 (footnote 34).

This type of conclusion, which is evident throughout the Court of Appeals' decision, even if not overtly stated, deserves review by this Court for two reasons. First, the intent or motivation of Evanson is irrelevant in applying the objectively reasonable police officer standard for qualified immunity. The standard is an objectively reasonable police officer in light of the circumstances at the time the warrant is issued, not any wrongful motivation of the particular police officer. Second, the standard does not require that

all evidence is to be viewed in favor of the plaintiff. Only those facts that are in dispute are to be resolved in favor of the non-moving party as part of the summary judgment analysis. Once those disputed facts are resolved in favor of the non-moving party, they are then added to all other facts – both those in favor of the moving party (if undisputed) and those in favor of the non-moving party to determine if qualified immunity is available.

This is the type of analysis that the Western District Court undertook when it reviewed each of the statements in the police officer's affidavit, compared them with the objectively determined facts of the case, revised the affidavit to correct relevant incorrect or incomplete facts and then analyzed the revised affidavit based on the reasonably competent police officer standard. This "corrective affidavit" approach logically follows the dictates of this Court in reviewing such cases.

CONCLUSION

This Court should grant the Petition for Writ of Certiorari to review and correct the misapplication of the principles of qualified immunity of governmental officials. It matters not whether the police officer acts under exigent circumstances or whether the officer has the luxury of time in making decisions. A review by this Court

will provide certainty in the qualified immunity analysis. This will benefit those whom the qualified immunity standard is intended to protect while addressing the proper balance between the defense of qualified immunity and providing a proper forum for clearly wronged individuals for redress. More importantly, it will ensure that governmental agencies and officers are all guided by unified principles in performing their duties without unnecessary fear of reprisal, unintended use of public funds and resources, and wasting time and effort in preparing for and attending to unwarranted trials.

Respectfully submitted,

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